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EXAMINER

NGUYEN, QUANG N

| ART UNIT | PAPER NUMBER |
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2141

DATE MAILED: 03/11/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/531,821

Applicant(s)

LEVY, ELI

Examiner

Quang N. Nguyen

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Detail Action***

1. Claims 1-40 are presented for examination. Claims 37-40 have been added.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boss et al. (US 6,157,618), herein after referred as Boss, in view of Chen et al. (US 5,812,780), herein after referred as Chen.

4. As to claim 1, Boss teaches a system (system 400 of Fig. 4) that monitors the performance of Internet connections comprising:

transmitting the first request message (information to access a particular target site, i.e., the server system) over a first communication link (first local dial-up connection) from the monitoring location (first computer as "UserMon" server 401 of Fig. 4) to a first network access location (second computer as first data-

gathering client) that is remote from the monitoring location for transmission on the network at the first network access location, to thereby simulate access to the server system (the target bookstore server) by a user who is local to the first network access location (Boss, C18: L62-65);

transmitting the second request message (information to access a particular target site, i.e., the server system) over a second communication link (second local dial-up connection) from the monitoring location (first computer as "UserMon" server 401) to a second network access location (third computer as second data-gathering client) that is remote from the monitoring location for transmission on the network at the second network access location, to thereby simulate access to the server system (the target bookstore server) by a user who is local to the second network access location (Boss, C19: L5-8).

whereby user access to the server system as experienced by users local to the first and second network access locations is monitored without the need for monitoring components local to the first and second network access locations (Boss, C4: L10-20).

However, Boss does not explicitly teach that at a monitoring location, generating first and second request messages that represent requests from users of the server system and monitoring responses received from the server system to the first and second request messages.

In the related art, Chen teaches a method and system for assessing the performance of a server application comprising:

at a monitoring location (LoadSim Client 26 of Fig. 2), generating first and second request messages that represent requests from users (200 simulated users) of the server system (Chen, C8: L29-36 and C17: L8-26);

at the monitoring location, monitoring responses received from the server system to the first and second request messages (Chen, C14: L23-31 and C17: L39-43).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Boss and Chen to have included the steps of at a monitoring location, generating first and second request messages that represent requests from users of the server system and monitoring responses received from the server system to the first and second request messages because it would provide the system a way of simulating users/clients making separate Internet connections to the server from all over the distributed communications network in order to assess/obtain server performance (e.g., to determine the response time, the max number of clients that a given server can adequately support, to diagnose Internet-connection problems) with a simulated client load and minimal hardware requirements.

5. As to claims 2-3, Boss-Chen teaches the method as in claim 1, wherein monitoring responses received from the server system comprises the performance-parameter values indicative of a user's experience at the data-gathering client (network access point) accessing the site and the performance-

parameter values include full-page download time (calculated response time) and full-page size (Boss, C6: L15-19).

6. As to claim 4, Boss-Chen teaches the method as in claim 2, wherein the network is the Internet, and the first and second communications links are connection-oriented links (first and second local dial-up connections) that directly connect the monitoring location (first computer, i.e., UserMon system) to the first and second network access locations (second and third computers, i.e., data-gathering clients), respectively (Boss, C18: L60-65 and C19: L5-8).

7. As to claim 5, Boss-Chen teaches the method as in claim 4, wherein the first and second communications links are Asynchronous Transfer Mode (ATM over fiber optic connections) links (Boss, C18: L46-50).

8. As to claim 6, Boss-Chen teaches the method as in claim 4, wherein the server system comprises a web server of a publicly accessible web site (target book store web site, Boss, C15: L34-43).

9. As to claim 7, Boss-Chen teaches the method as in claim 1, wherein the first and second communications links are connection-oriented links (first and second local dial-up connections) that directly interconnect the data center (UserMon) with the first and second network access locations (second and third

computers, i.e., data-gathering clients), respectively (Boss, C18: L60-65 and C19: L5-8).

10. As to claim 8, Boss-Chen teaches the method as in claim 7, wherein the first and second communications links are Asynchronous Transfer Mode (ATM over fiber optic connections) links (Boss, C18: L46-50).

11. As to claim 9, Boss-Chen teaches the method as in claim 8, wherein the network is the Internet (Boss, C18: L24-35).

12. As to claims 10-11, Boss-Chen teaches the method as in claim 1, wherein transferring the first request message over the first communications link to a router or a modem that is directly connected to the network (Boss, C18: L16-35).

13. Claims 12-22 are corresponding system claims of claims 1-5, 7 and 10; therefore, they are rejected under the same rationale (Boss, Figs. 4, 13 and corresponding text).

14. Claims 23-29 are corresponding method claims of claims 1-7; therefore, they are rejected under the same rationale.

15. Claims 30-36 are corresponding system claims of claims 1-5, 7 and 10; therefore, they are rejected under the same rationale.

16. Claims 37-40 are corresponding system claims of claims 1-4 and 7; therefore, they are rejected under the same rationale.

### ***Response to Arguments***

17. In the remarks, applicant argued in substance that

(A) Prior Art does not disclose or suggest, "a mechanism for measuring server performance as seen from a location other than locations of these client/agent computers".

As to point (A), Chen's system measures server performance (response times) as seen from a single location (the LoadSim client 26 of Fig. 2). Boss' system analyzes (measures) server performance as seen from a single location (the "UserMon" server 401 of Fig. 4) using the performance-parameter values forwarded/pushed from data-gathering client computers (Boss, C2: L39-52 and C4: L10-20).



(B) Prior Art does not disclose or suggest, "first and second request messages that represent requests from users of the server system".

As to point (B), Chen teaches the LoadSim client 26 running on a single computer, generates 200 request messages that represent requests from 200 simulated users of the server system (Chen, C5: L5-20 and C8: L29-42).

(C) Prior Art does not disclose or suggest, "a plurality of communication links, each communication link connecting one or more of the plurality of agent computers to a respective network access point within a respective user location that is geographically remote from the central location; wherein the plurality of agent computers are configured to communicate with the server system via plurality of communication links to monitor the performance of the server system as seen from the multiple user locations".

As to point (C), Boss teaches a system 1300 of Fig. 13 wherein four data gathering clients 1301-1304 (i.e., plurality of agent computers) are connected to four respective ISP servers 1305-1308 (i.e., network access points) within a respective user location that is geographically remote from the "UserMon" server 401 (i.e., central location) (Boss, C15: L18-33). Boss also teaches each of the data-gathering clients 1301-1304 accesses the target bookstore server (i.e., the server system) via its respective ISP server (i.e., plurality of communication links) to monitor the performance of the server system as seen from the multiple user locations (Boss, C15: L34-43).

(D) Prior Art does not disclose or suggest, "an agent computer that is configured to use IP (Internet Protocol) addresses associated with the Internet point of presence, such that all forward and reverse message traffic between the agent computer and the Internet server system flows across the dedicated link".

As to point (D), Boss teaches the data-gathering client (agent) computer using the preprogrammed settings (for example, URL or IP address) to connect to a POP, to ISP or to UserMon server through Internet connections (Boss, C3: L49-56 and C4: L55-58).

(E) "Chen appears to be concerned with testing the load capacity of a target server, not with measuring performance".

As to point (E), Chen teaches a method and system for assessing the performance of a server application that acquires performance information from the perspective of a simulated user (Chen, ABSTRACT). Chen also teaches the LoadSim client can be implemented as a computer program to establish the plurality of logical connection representing users, generate and communicate the tasks for each of the simulated users, monitor and record response times for the executed tasks, and compute the necessary statistics to assess the server performance (Chen, C16: L56-65).

18. Applicant's request for reconsideration as well as arguments filed on 01/31/2003 have been fully considered but they are not deemed to be persuasive.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (703) 305-8190.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Le H. Luu, can be reached at (703) 305-9650. The fax phone numbers for the organization is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Quang N. Nguyen

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LE HIEN LUU  
PRIMARY EXAMINER